

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TINA JOY MARTIN,

Defendant-Appellant.

UNPUBLISHED

October 27, 2015

No. 322220

Calhoun Circuit Court

LC No. 2013-003512-FC

Before: M. J. Kelly, P.J., and Murray and Shapiro, JJ.

SHAPIRO, J (*concurring*).

I agree with the majority except as to its analysis regarding the admission of the complainant's jacket as a demonstrative exhibit. When the prosecutor sought to admit the jacket, which appeared to have been damaged by a cutting instrument, defense counsel objected because the jacket had not been provided to the defense during discovery even though there was a request for all physical evidence. The trial court agreed that the objection was well-grounded, but rather than excluding the jacket from evidence, the court allowed its admission as demonstrative evidence and it was displayed to the jury. The jacket, however, did not constitute demonstrative evidence because it played a direct part of the incident in question. Its purpose was not to clarify other evidence as is the proper role of demonstrative evidence, such as a chart or graph. Instead, it was intended to show that the jacket was cut and to serve as actual physical evidence of the assault, which makes this piece of evidence directly contrary to the dictionary definition of demonstrative evidence. See *Black's Law Dictionary* (10th ed). Because it was real and not demonstrative evidence, the trial court's ruling was in error.

I nevertheless concur because, after a review of the entire record, I conclude that the error was harmless. See *People v Williams*, 483 Mich 226, 243; 769 NW2d 605 (2009).

/s/ Douglas B. Shapiro